

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTHONY CORTEZ
1309 Lansdowne Blvd.
Youngstown, Oh 44505

PLAINTIFF,

v.

UNITED STATES OF AMERICA
Department of Justice
Room 5111
10th & Constitution Ave., N.W.
Washington, D.C. 20530

And

Serve:
JUSTIN E. HERDMAN
U.S. Attorney for the Northern District of
Ohio
801 W. Superior Ave., Ste. 400
Cleveland, Ohio 44113

DEFENDANT.

* CIVIL ACTION NO.:

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* JUDGE:

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* MAGISTRATE:

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COMPLAINT

Plaintiff, Anthony Cortez, by and through his undersigned counsel, for his Complaint against the Defendant, United States of America, alleges as follows:

INTRODUCTION

1. This is an action against Defendant United States of America under the Federal Tort Claims Act, (28 U.S.C. §2671, *et seq.*) and/or 28 U.S.C. §1346(b)(1) and/or 28 U.S.C. §2401(b) for negligence in connection with the motor vehicle accident of March 8, 2017.

2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act, (28 U.S.C. §2671, *et seq.*) and/or 28 U.S.C. §1346(b)(1) and/or 28 U.S.C. §2401(b), for money damages as compensation for personal injuries and property damage caused by Defendant's negligence.

3. Plaintiff Anthony Cortez has fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act, including but not limited to filing the Standard Form 95. *Standard Form 95 attached hereto and incorporated herein as if fully rewritten as Exhibit 1.*

4. This suit has been timely filed, in that Plaintiff Anthony Cortez timely served notice of his claim on the United States Postal Service less than two years after the incident forming the basis of this suit.

5. Plaintiff Anthony Cortez is now filing this Complaint pursuant to 28 U.S.C. §2401(b) after receiving the United States Postal Service's January 17, 2019 "final denial of administrative claim." *Administrative Tort Claim Denial Letter attached hereto and incorporated herein as if fully rewritten as Exhibit 2.*

PARTIES

6. Plaintiff Anthony Cortez is a person of the full age of majority and domiciled in the State of Ohio.

7. Defendant United States of America, through its agency, the United States Postal Service, and/or through the United States Postal service employee, Marcinde North, operated the subject mail truck titled to the United States Postal Service located at 99 S. Walnut St., Youngstown, Ohio 44503.

8. At all relevant times to this Complaint, the directors, officers, operators, administrators, employees, agents, and staff of the United States Postal Service were employed by and/or acting

on behalf of the Defendant. Furthermore, the Defendant is responsible for the acts and negligent acts of their employees and agents under respondeat superior.

JURISDICTION AND VENUE

9. Jurisdiction is proper under 28 U.S.C. §1346(b)(1).

10. Venue in this district is appropriate pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTS

11. Defendant United States of America herein is justly and truly indebted to Plaintiff, for such damages as are reasonable, including past, present and future physical pain and suffering, past, present and future mental anguish, past, present and future medical expenses, past, present and future loss of enjoyment of life, past, present and future loss of earnings, and disability, and property damages to Plaintiff's motor vehicle, together with legal interest thereon from date of judicial demand, until paid, and for all costs of these proceedings, for the reasons set forth in the following paragraphs.

12. On or about March 8, 2017, Plaintiff, Anthony Cortez, was operating a blue 1995 Honda Civic motor vehicle titled to Anthony Cortez. The motor vehicle was traveling west on Victor Avenue approaching Buckeye Ct., in the City of Youngstown, State of Ohio.

13. At or about the same time, date and place as alleged in Paragraph 12 of this Complaint, Marcinde North, an employee of the United States Postal service, in the course and scope of his employment with the United States Postal Service, caused a collision with the vehicle that Plaintiff Anthony Cortez was operating.

COUNT I

14. Plaintiff Anthony Cortez realleges and reincorporates each and every allegation above as if fully set forth herein.

15. On or about March 8, 2017, Marcinde North was negligently, and/or grossly negligently, and/or carelessly, and/or recklessly operating a white 1993 Chevrolet mail truck titled to the United States Postal Service, whose address is 99 S. Walnut St., Youngstown, Ohio 44503, westbound on Victor Avenue approaching Buckeye Ct. As a result of, including but not limited to, Marcinde North's negligent left hand turn from a stopped position, while utilizing flashers, towards a driveway without looking, he collided with the blue 1995 Honda Civic motor vehicle, titled to Plaintiff Anthony Cortez, that was legally trying to pass Marcinde North on the left, operated by Plaintiff, Anthony Cortez, causing injury to Anthony Cortez.

16. As a direct and proximate result of Defendant's acts and/or negligence, Plaintiff Anthony Cortez sustained serious and permanent personal injuries in and about his body; he has incurred medical expenses, and other damages, and will continue to incur medical expenses and other damages in the future; he was forced to endure pain, suffering, and mental anguish, and will continue to endure pain, suffering, and mental anguish in the future; he has suffered a loss of enjoyment of life, and will continue to suffer a loss of the enjoyment of life in the future; he has lost wages, and will continue to lose wages in the future; and he has incurred property damage to his vehicle.

COUNT II

17. Plaintiff Anthony Cortez realleges and reincorporates each and every allegation above as if fully set forth herein.

18. At all times relevant herein, Defendant, United States of America, through its agency, the United States Postal Service was the owner of the vehicle negligently and/ or grossly negligently and/or carelessly and/or recklessly operated by its employee, Marcinde North.

19. At all times relevant herein, Defendant, United States of America, through its agency, the United States Postal Service was negligent and/or grossly negligent and/or careless and/or reckless in entrusting its vehicle to its employee, Marcinde North, a person they knew, or with exercise of reasonable care should have known was negligent and/or grossly negligent and/or careless and/or reckless and/or incompetent as a driver of a motor vehicle.

20. As a direct and proximate result of Defendant's acts and/or negligence, Plaintiff Anthony Cortez sustained serious and permanent personal injuries in and about his body; he has incurred medical expenses, and other damages, and will continue to incur medical expenses and other damages in the future; he was forced to endure pain, suffering, and mental anguish, and will continue to endure pain, suffering, and mental anguish in the future; he has suffered a loss of enjoyment of life, and will continue to suffer a loss of the enjoyment of life in the future; he has lost wages, and will continue to lose wages in the future; and he has incurred property damage to his vehicle.

WHEREFORE, Plaintiff, Anthony Cortez, prays for a trial by jury and further prays that there be a judgment in favor of Plaintiff, Anthony Cortez, and against the Defendant, The United States of America in amounts as are reasonable, together with legal interest thereon from date of judicial demand, until paid, and for all costs of these proceedings.

FURTHER, for all other such general and equitable relief as this Honorable Court may deem proper.

DATED this __6th__ day of March, 2019.

Respectfully submitted,

/s/ Daren Niemi

Daren Niemi (Attorney of Record)

OH Bar No. (0093640)

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Attorney for Anthony Cortez

JURY DEMAND

Plaintiff, Anthony Cortez, demands every issue of fact to be tried and decided upon by a jury constituting the maximum number of members as permitted by rule.